NOT FOR PUBLICATION | Filed: 6/12/00

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

In Re EDWARD E. LITWAK, aka ED LITWAK,

Debtor.

NO: 99-55678

BAP No. SC-98-01452-RyGJ

ORDER

EDWARD E. LITWAK, aka ED LITWAK,

Appellant,

vs.

OSCAR PRODUCTIONS, INC.; JENNIFER O'NEILL,

Appellees.

Before: SCHROEDER, BEEZER, and TROTT, Circuit Judges.

The Panel as constituted above has voted to deny the petition for rehearing. Judges Schroeder and Trott have voted to deny the petition for rehearing en banc, and Judge Beezer so recommends.

The full court has been advised of the suggestion for rehearing en banc and no judge of the court has requested a vote on it. Fed. R. App. P. 35(b).

The petition for rehearing, and the petition for rehearing en banc, are DENIED.

NOT FOR PUBLICATION

Filed: 5/2/00

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

In Re EDWARD E. LITWAK, aka ED LITWAK,

Debtor.

NO: 99-55678

BAP No. SC-98-01452-RyGJ

MEMORANDUM[1]

EDWARD E. LITWAK, aka ED LITWAK,

Appellant,

vs.

OSCAR PRODUCTIONS, INC.; JENNIFER O'NEILL,

Appellee.

Appeal from the Ninth Circuit

Bankruptcy Appellate Panel

Ryan, Greenwald, Jones, Judges, Presiding

Argued and Submitted April 12, 2000

[1] This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by Ninth Circuit Rule 36-3.

San Francisco, California

Before: SCHROEDER, BEEZER, AND TROTT, Circuit Judges

Edward E. Litwak ("Litwak") appeals the Bankruptcy Appellate Panel's ("BAP") decision affirming the bankruptcy court's grant of summary judgment in favor of Oscar Productions, Inc. and Jennifer O'Neill (collectively "Appellees") on their claim of nondischargeability under 11 U.S.C. section 523(a)(2)(A) and (a)(6). Litwak argues that the bankruptcy court erred by giving collateral estoppel effect to a state court default judgment for fraud. This court has jurisdiction under 28 U.S.C. section 158(d) and we AFFIRM.

The parties are familiar with the facts of this case and, therefore, we will not reiterate them here. Because this court is in as good a position as the BAP to review the decision of the bankruptcy court, we review the bankruptcy court's decision independently. Gayden v. Nourbakhsh (In re Nourbakhsh), 67 F.3d 798, 800, (9th Cir. 1995). The bankruptcy court's grant of summary judgment is reviewed de novo. Id. In deciding whether summary judgment was appropriate, we must determine, viewing the evidence in the light most favorable to the non-moving party, whether there are any genuine issues of material fact and whether the bankruptcy court applied the relevant substantive law See Margolis v. Ryan, 140 F.3d 850, 852 (9th Cir. 1998).

Litwak contends that the bankruptcy court erred in giving collateral estoppel effect to the state court default judgment because (1) the federal, rather than the state, rule of collateral estoppel applies, and (2) an exception to the full faith and credit statute applies based on the strong federal policy of a fresh start for the honest, but unfortunate, debtor. We reject Litwak's arguments, however, because they squarely contradict

this court's holding in Gayden v. Nourbakhsh. In Nourbakhsh, the court held that in order to determine the preclusive effect of a state court judgment in a subsequent federal lawsuit, courts must decide (1) whether, under the applicable state law, the state court judgment should be given collateral estoppel effect, and (2) if so, whether an exception to the full faith and credit statute should apply. Nourbakhsh, 67. F.3d at 800 (citing Marrese v. American Academy of Orthopaedic Surgeons, 470 U.S. 373 381-83 (1985)). Applying this framework, the Nourbakhsh court first determined that, under Florida law, the default judgment against the debtor would be given collateral estoppel effect. Id. at 800-01. Then, relying on Grogan v. Garner, 498 U.S. 279 (1991), the court concluded that there was no applicable exception to the full faith and credit statute. Id. at 801. Accordingly, the Nourbakhsh court held that the Florida state court default judgment should be given collateral estoppel effect in the subsequent bankruptcy proceeding. Id.

Here, the issues are the same as those presented in Nourbakhsh, and Litwak advances the same arguments as the debtor in that case. Moreover, like Florida, California law provides that courts should give collateral estoppel effect to a state court default judgment. See Four Star Elec., Inc. v. F & H Constr., 7 Cal. App. 4th 1375, 1380 (1992); Fitzgerald v. Herzer, 78 Cal. App. 2d 127, 131-32 (1947) ("A judgment by default is as conclusive as to the issues tendered by the complaint as if it had been rendered after answer filed and trial had on allegations denied by the answer. Such a judgment is res judicata as to all issues aptly pleaded in the complaint and defendant is estopped from denying in a subsequent action any allegations contained in the former complaint.") (internal citations omitted); see also Younie v. Gonya (In re Younie), 211 B.R. 367, 375 (9th Cir. BAP 1997) (holding that in California a default judgment satisfies the actually litigated" requirement for the application of collateral

estoppel), aff'd, 163 F.3d 609 (9th Cir. 1998). Thus, Nourbakhsh is on all fours with this case, which ends our inquiry. "A three judge panel is bound by a prior judgment of this court unless the case is taken en banc and the prior decision is overruled. Roundy v. Commissioner, 122 F.3d 835, 837 (9th Cir. 1997).

AFFIRMED.

Filed: 5/2/00

UNITED STATES BANKRUPTCY APPELLATE

PANEL OF THE NINTH CIRCUIT

In Re EDWARD E. LITWAK, aka ED LITWAK,	BAP No. SC-98-01452-RyGJ
Debtor.	Bk No: 97-16497-H7
	Adv. No. 98-90009-H7
	MEMORANDUM[1]

EDWARD E. LITWAK,

Appellant,

vs.

OSCAR PRODUCTIONS, INC.; JENNIFER O'NEILL,

Appellees.

Argued and submitted on December 3, 1998 at San Diego, California Filed March 2, 1999

Appeal from the United States Bankruptcy Court for the Southern District of California

Honorable John J. Hargrove, Bankruptcy Judge, Presiding

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[1] This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except when relevant under the doctrine of law of the case, res judicata, or collateral estoppel . See BAP Rule 13 & Ninth Circuit Rule 36-3.

Before: RYAN, GREENWALD[2] and JONES, Bankruptcy Judges

A state court default judgment (the "Default Judgment") was entered against appellant Edward E. Litwak ("Debtor") on fraud and intentional infliction of emotional distress causes of action. Debtor subsequently filed a chapter 7[3] bankruptcy petition. Judgment creditors Oscar Productions, Inc. (f/s/o Jennifer O'Neill) and Jennifer O'Neill ("Appellees") then filed a motion for summary judgment (the "Motion") based on the Default Judgment arguing that collateral estoppel precluded relitigation of the fraud cause of action under section 523(a)(2) and the intentional infliction of emotional distress cause of action under section 523(a)(6). The bankruptcy court granted the Motion and Debtor appeals. We AFFIRM.

I. FACTS

The facts are undisputed. On August 14, 1992, Appellees filed an action against Debtor in state court for conspiracy, fraudulent inducement to contract, negligent misrepresentation, bad faith denial of contract, bad faith denial of agency, breach of contract, and intentional infliction of emotional distress. Debtor failed to answer the state court complaint and the state court entered a default against him.

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[2] Hon. Arthur M. Greenwald, Bankruptcy Judge for the Central District of California sitting by designation.

[3] Unless otherwise indicated, all chapter, section and rule references are to the Bankruptcy Code, 11 U.S.C. section 101-1330 and the Federal Rules of Bankruptcy Procedure, Rules 1001-9036.

Appellees requested that the state court entered a default judgment on the fraud and intentional infliction of emotional distress claim only. In March, 1997, the state court entered the Default Judgment against Debtor in the amount of $8,480,741.40 plus interest at the legal rate.

Debtor failed to appeal the Default Judgment which has since become final.

On November 5, 1997, Debtor filed a chapter 7 bankruptcy petition. Appellees filed the Complaint based upon the Default Judgment. In April, 1998, Appellees filed the Motion asserting that the Default Judgment was entitled to collateral estoppel application. On May 26, 1998, a hearing on the Motion was held and on June 11, 1998, the bankruptcy court entered an order (the "Order') granting the Motion. The court found that the Default Judgment for fraud and intentional infliction of emotional distress necessarily determined that the debt was obtained by fraud and was based on willful and malicious injury for purposes of section 523(a)(2)(A) and (a)(6) respectively. Thus, the court determined that collateral estoppel precluded the relitigation of these issues. Debtor timely filed a notice of appeal.

II. ISSUES

A. Whether the bankruptcy court erred in granting the Motion on the basis that the Default Judgment was entitled to collateral estoppel application in California.

B. Whether the Rooker-Feldman doctrine precludes Debtor from challenging the validity of the Default Judgment.

III. STANDARD OF REVIEW

We review rulings on summary judgment de novo. See Bank of Los Angeles v. Official PACA Creditor's comm. (In re Southland+Keystone), 132 B.R. 632, 637 (9th Cir. BAP 1991). Similarly, we review the bankruptcy court's application of collateral estoppel de novo. See Gayden v. Nourbakhsh (In re Nourbakhsh), 67. F3d 798, 800 (9th Cir. 1995).

IV. DISCUSSION

A. The Bankruptcy Court Correctly Held That the Default Judgment was Entitled to Collateral Estoppel Application.

The bankruptcy court, relying on Ninth Circuit holding in Nourbakhsh, 67 F.3d at 801, and our holding in Younie v. Gonya (In re Younie), 211 B.R. 367, 374-75 (9th Cir. BAP 1997), aff'd, 163 F.3d 609 (9th Cir. 1998), held that the Default Judgment was entitled to collateral estoppel application in California. Debtor argues that the bankruptcy court erroneously gave collateral estoppel application to the Default Judgment because: (1) Nourbakhsh was incorrectly decided; and (2) giving collateral estoppel effect to a default judgment violates fundamental policy of bankruptcy law – to give an honest but unfortunate debtor a fresh start. We reject Debtor's assertions.

Under the Full Faith and Credit Statute, 28 U.S.C. section 1738, a federal court "must give to a state court judgment the same preclusive effect as would be given that judgment under the law of the state in which the judgment was rendered.'"

Under the Full Faith and Credit Statute, 28 U.S.C. section 1738, a federal court "must give to a state court judgment the same preclusive effect as would be given that judgment under the law of the state in which the judgment was rendered.'" Younie, 211 B.R. at 373 (quoting Migra v. Warren City School Dist. Bd. Of Educ., 465 U.S. 75, 81 (1984)). Collateral estoppel applies in dischargeability proceedings in bankruptcy. See Grogan v. Garner, 498 U.S. 279, 284-85 & n.11 (1991). Under California law, collateral estoppel is satisfied when the issue sought to be precluded from relitigation: (1) is identical to the issue decided in the former proceeding; (2) was actually litigated in the former proceeding: (3) was necessarily decided in the former proceeding; (4) resulted in a final judgment on the merits; and (5) involves the same party or a party in privity to the party in the former proceeding. See Younie, 211 B.R. at 373 (citing Kelly v. Okoye (In re Kelly), 182 B.R. 255, 258, (9th Cir. BAP 1995), aff'd, 100 F.3d 110 (9th Cir. 1996)). Here, Debtor only challenges the actually litigated prong of collateral estoppel.

We have decided the identical issue of whether a California default judgment was actually litigated for purposes of collateral estoppel. Id. at 375. In Younie, a judgment creditor filed a complaint in a California trial court against the debtors alleging fraud and intentional misrepresentation, negligent misrepresentation, and breach of contract. Id. at 370. The debtors failed to answer the complaint, and a default judgment was entered. The debtors filed a chapter 7 bankruptcy petition, and the creditor brought a nondischargeabiltiy action alleging that the debt arising from a state court default judgment was nondischargeable under section 523(a)(2)(A) or (a)(6). The creditor then filed a

summary judgment motion, invoking the application of collateral estoppel. The bankruptcy court granted the motion and the debtor appealed.

We affirmed. First, we recognized the Ninth Circuit's holding in Nourbakhsh[4] that "the bankruptcy

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[4] The thrust of Debtor's argument is that Nourbakhsh was wrongly decided. At the hearing on the Motion, the following colloquy occurred:

THE COURT: OKAY. MR. SMYLIE, I READ YOUR CLAIMS AND WHAT YOU SEEM TO BE DOING IS REALLY ATTACKING NINTH CIRCUIT AUTHORITY. NOT SO MUCH THE COURT'S AUTHORITY. BUT WHAT YOU'RE BASICALLY SAYING, FOR EXAMPLE, I SHOULDN'T GRANT THE SUMMARY JUDGMENT MOTION BECAUSE I GUESS THE CASE WASN'T ACTUALLY LITIGATED?

MR. SMYLIE: [DEBTOR'S ATTORNEY]: CORRECT.

THE COURT: YOU'RE CHALLENGING [NOURBAKHSH] ... AND SOME OF THE OTHER NINTH CIRCUIT [sic] IN THAT CASE. IS THAT THE THRUST OF THE ARGUMENT?

MR. SMYLIE: YES, ESSENTIALLY IT IS, YOUR HONOR. I GUESS THE POINT IS TO SOME EXTENT, I THINK THOSE CASES ARE DISTINGUISHABLE BECAUSE IN ANALYZING GROGAN, I DON'T THINK EITHER CASE CITED TO GROGAN'S STATEMENT IN THE CASE WHEN IT SAID THE [sic] COLLATERAL ESTOPPEL APPLIED.

THE COURT: YEAH, BUT I'M LOOKING AT THE NINTH CIRCUIT... YOU'VE RAISED LEGAL ARGUMENTS, BUT I'M BOUND BY THE CIRCUIT AND I'M BOUND BY THE [BANKRUPTCY APPELLATE PANEL]., IN MY VIEW.

MR. SMYLIE: TO BE INTELLECTUALLY HONEST WITH THE COURT, I UNDERSTAND THE POSITION. I SUPPOSE THAT MY VIEW IS THE SAME AS JUDGE RUSSELL IN HIS DISSENTING OPINION IN [NOURBAKHSH]. I THINK THE CASE WAS

court had to give collateral estoppel effect to a state court default judgment when the state in which the judgment was rendered would do so." Id at 374 (citing Nourbakhsh, 67 F.3d at 801). We then noted that in California, a default judgment satisfied the "actually litigated" requirement of collateral estoppel. Id. at 375 (citing Lake v. Capps (In re Lake), 202 B.R. 751, 757 &n.6 (9th cir. BAP 1996); Green v. Kennedy In re Green), 198 B.R. 564, 566 (9th Cir. BAP 1996) (holding that a default judgment entered after the defendant's answer was stricken was entitled to collateral estoppel effect) (Citing Four Star Elec., Inc. v. F&H Constr., 10 Cal. Rptr. 2d 1, 5 (Ct. App. 1992))).

Debtor does not cite to any statutory or case law that has overruled Nourbakhsh or Younie[5]. Indeed, the Ninth Circuit recently reaffirmed the vitality of Nourbakhsh when it affirmed our holding in Younie. Accordingly, we conclude that the bankruptcy court did not err in holding that the Default Judgment must be given collateral estoppel effect.

B. The Rooker-Feldman Doctrine Precluded Review of the Default Judgment.

Debtor also argues that the Default Judgment was erroneous and challenges the facts asserted in the state court complaint. Debtor was barred from

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WRONGLY CITED [sic]... Reporter's Tr. Of Proceedings (May 26, 1998) at 3-7.

[5] Debtor only argues that the Code or the fundamental policy of bankruptcy provides an exception to or implied repeal of the Full Faith and Credit provision. However, the Ninth Circuit considered and rejected an identical argument. See Nourbakhsh, 67 F.3d at 801.

challenging the validity of the Default Judgment in the bankruptcy court. The United States Supreme Court has held that federal district courts lack subject matter jurisdiction to hear collateral attacks on state court judgments or to review final determinations of state court decision. See District of Columbia Court of Appeals v. Feldman, 460, U.S. 462 (1983); Rooker v. Fidelity Trust co., 263 U.S. 413 (1923). This legal concept has come to be known as the Rooker-Feldman doctrine. See Audre, Inc. v. Casey (In re Audre, Inc., 216 B.R. 109, 26 (9th Cir. BAP 1997). In Feldman, the Court recognized that 28 U.S.C. section 1257 only permitted the United States Supreme Court, and no other federal court, to review final decisions of state courts. See Audre, 216 B.R. at 26 (citing Worldwide Church of God v. McNair, 805 F.2d 888, 890 (9th Cir. 1986); Dubinka v. Judges of Superior Court, 23 F.3d 218, 221 (9th Cir. 1994)).

In Audre, we held that the Rooker-Feldman doctrine prevented the bankruptcy court from disallowing a claim based on a California family court judgment. Id. at 31. We noted that the doctrine has been applied in bankruptcy courts, Id. at 26, and "applies to judgment from any state court, regardless of whether the judgment is on appeal." Id. at 28 (citing Worldwide Church, 805 F.2d at 893).

However, we recognized in dictum that a bankruptcy court can intervene in a state court judgment "if the state proceeding were void ab initio; a void judgment being one which from its inception was a complete nullity and without legal effect. Id. (citing James v. Draper (In re James), 940 F.2d 46, 52 (3rd Cir. 1991)). Absent such a finding, the Rooker-Feldman doctrine applies "even where a state court judgment

may be in error." Id. at 29 (citing In re Highway Truck Drivers and Helpers, Teamsters Local No. 107, 100 B.R. 2009, 21`76 (Bankr. E.D. Pa. 1989)).

Here, Debtor does not argue that the state court was without jurisdiction to render the Default Judgment. Rather, he argues that he had no knowledge that the Default Judgment had been entered until Fall 1997. However, because Debtor failed to appeal the Default Judgment, the Default Judgment is final and could only be challenged in the state court by filing a motion for reconsideration. Consequently, Debtor was precluded from challenging the validity of the Default Judgment in the bankruptcy court.

V. CONCLUSION

In sum, the bankruptcy court did not err when it granted the Motion on the basis that the Default Judgment was entitled to collateral estoppel application. We are bound by Nourbakhsh, Younie and other precedential authority for the proposition that default judgments satisfy the actually litigated prong of collateral estoppel in California.

Additionally, the Rooker-Feldman doctrine precluded Debtor from challenging the validity of the Default Judgment in the bankruptcy court.

Accordingly, we AFFIRM.

Timothy D. Reuben, Esq. (State Bar #94312)
Stephen L. Raucher, Esq. (State Bar #162795)
Teri T. Pham, Esq. (State Bar #193383)
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Entered 7/11/98
Filed: 6/9/98

Attorneys for Plaintiffs
OSCAR PRODUCTIONS, INC. and
JENNIFER O'NEILL

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

In Re EDWARD E. LITWAK, aka EDLITWAK ANDERSON, aka ED LITWAK,

Debtor.

CASE NO: 97-16497-JH
[Chapter 7]

ADV. PROC. NO: 98-90009

JUDGMENT

(Filed concurrently with Proposed Order and Findings of Fact and Conclusions of Law)

Chapter 7 Case Filed: 11/5/97
Adv. Proc. Filed: 1/8/98

Date: May 26, 1998
Time: 10:30 a.m.
Dept: 3
Room 129

OSCAR PRODUCTIONS, INC. (f/s/o) Jennifer O'Neill) and JENNIFER O'NEILL, an individual,

Plaintiffs

vs.

EDWARD E. LITWAK, an individual,

Defendant.

IT IS ORDERED, ADJUDGED, AND DECREED THAT:

Plaintiffs' state court judgement dated March 17, 1997, L.A.S.C. Case No.. BC062132, is non-dischargeable in the amount of $8,480,741.40, together with interest at the legal rate of 10 percent per annum since March 17, 1997. Plaintiffs shall recover from Defendant Litwak their costs of suit in the amount of $_____.

Dated: 6/9/98

"S/"
Judge, U.S. Bankruptcy Court

Signature by the attorney constitutes a certification under Fed. R. Bankr. P. 9011 that the relief provided by the order is the relief granted by the court.

Submitted by:

REUBEN & NOVICOFF

By: "S/"
Stephen L. Raucher
Attorneys for Plaintiffs Oscar Productions, Inc. and Jennifer O'Neill

Approved as to form and content:

SMYLIE VAN DUSEN

By: "S/"
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JENNIFER O'NEILL

Entered: 6/11/98
Filed: 6/9/98

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

In Re EDWARD E. LITWAK, aka EDLITWAK ANDERSON, aka ED LITWAK,	CASE NO: 97-16497-JH [Chapter 7]
Debtor.	ADV. CASE NO. 98-90009
OSCAR PRODUCTIONS, INC. (f/s/o) Jennifer O'Neill) and JENNIFER O'NEILL, an individual,	[PROPOSED] ORDER AND FINDINGS OF FACT AND CONCLUSIONS OF LAW (Filed concurrently with Proposed Judgment
Plaintiffs	Chapter 7 Case Filed: 11/5/97 Adv. Proc. Filed: 1/8/98
vs.	Date: May 26, 1998 Time: 10:30 a.m.
EDWARD E. LITWAK, an individual,	Dept: 3 Room 129
Defendant.	

The motion of plaintiffs Oscar Productions, Inc. and Jennifer O'Neill for Summary Judgment on their Complaint to Determine Non-Dischargeability of Debt came on regularly for hearing on May 26, 1998, in Department 3, Room 129 of this court, the Honorable John J. Hargrove, Judge Presiding. Stephen L. Raucher of Reuben & Novicoff appeared on behalf of the moving parties; Scott A. Smylie appeared on behalf of the debtor/defendant Edward E. Litwak.

Having reviewed the moving and opposing papers, and having considered the arguments of counsel, the court determines as follows:

FINDINGS OF FACT

1. On August 14, 1992, Plaintiffs brought an action in the Los Angeles County Superior Court against Defendant Edward E. Litwak for Conspiracy, Fraudulent Inducement to Contract, Negligent Misrepresentation, Bad Faith Denial of Contract, Bad Faith Denial of Agency, Breach of Contract, and Intentional Infliction of Emotional Distress. (Oscar Productions, Inc. v. Paolo Gucci, et al.) L.A.S.C. Case No. BC 062132). On October 21, 1992, Plaintiffs filed a substantially identical First Amended Complaint. (Exhibit A to Plaintiffs' Request for Judicial Notice, filed in support of their motion for summary judgment.)

2. Defendant Litwak failed to answer the First Amended Complaint, and the court entered a default against him on January 11, 1993. (Exhibit B to Request for Judicial Notice.)

3. Plaintiffs subsequently requested the entry of default judgment on the fraud and intentional infliction of emotional distress claims alone,

submitting their evidence on March 10, 1997. (Exhibit C to Request for Judicial Notice.)

4. On March 17, 1997, the court entered a Judgment against Defendant Litwak on the fraud and intentional infliction of emotional distress claims in the amount of $6,250,000.00, plus $2,230,559.40 in prejudgment interest, and costs of $182.00, for a total amount of $8,480,741.40, together with interest as provided by law. (Exhibit E to Request for Judicial Notice.) That Judgment is now final.

5. On November 5, 1997, Defendant Litwak filed a voluntary petition for bankruptcy relief under Chapter 7 of the bankruptcy code.

6. On January 8, 1998, Plaintiffs filed a Complaint to Determine Non-Dischargeability of Debt under 11 U.S.C. section 523(a)(2)(A) and 11 U.S.C. section 523(a)(6), based upon their state court judgment against Defendant Litwak.

Based upon the foregoing Findings of Fact, the Court now makes its:

CONCLUSIONS OF LAW

7. Plaintiffs' state court judgment against Defendant Litwak for fraud and intentional infliction of emotional distress necessarily determined that the debt owing to Plaintiffs was obtained by means of fraud, and is based on willful and malicious injury.

8. Defendant Litwak is therefore collaterally estopped in this Dischargeability proceeding from relitigating the issues of fraud and willful and malicious injury. In re Nourbakhsh, 67 F.3d

798 (9th Cir. 1995); In re Younie, 211 B.R. 367 (9th Cir. BAP 1997).

9. The entire debt of Defendant Litwak owing to Plaintiffs is non-dischargeable as a matter of law under 11 U.S.C. section 523(a)(2)(A) and 11 U.S.C. section 523(a)(6).

10. Defendant Litwak's opposition did not raise a triable issue with respect to any of the material facts set forth above. Summary judgment therefore must be entered in favor of Plaintiffs against Defendant Litwak on the Complaint to Determine Non-Dischargeability of Debt.

11. Accordingly, Plaintiffs' Motion for Summary Judgment is GRANTED. IT IS ORDERED that Plaintiffs' state court judgment dated March 17, 1997, L.A.S.C. Case No. BC 062132, is non-dischargeable in the amount of $8,480,741.40, together with interest at the legal rate of 10 percent per annum since March 17, 1997. IT IS FURTHER ORDERED that Judgment be entered in this action in favor of Plaintiffs and against Defendant Litwak.

Dated: 6/9/98

"S/"
Judge, US. Bankruptcy Court

Signature by the attorney constitutes a certification under Fed. R. Bankr. P. 9011 that the relief provided by the order is the relief granted by the court.

Submitted by:

REUBEN & NOVICOFF

By: "S/"
Stephen L. Raucher
Attorneys for Plaintiffs Oscar Productions, Inc. and Jennifer O'Neill

Approved as to form and content:

SMYLIE VAN DUSEN

By: "S/"
Scott A. Smylie
Attorneys for Defendant Edward E. Litwak